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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,865	06/07/2001	Mark Andrew Benny	AUS9-2001-0208-US1	9366
7590 Kelly K. Kordzik 5400 Renaissance Tower 1201 Elm Street Dallas, TX 75270			EXAMINER FREJD, RUSSELL WARREN	
			ART UNIT 2128	PAPER NUMBER
			MAIL DATE 08/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Part of Paper No./Mail Date 20070806

In re Application of: Benny et al.

Examination of Application #09/875,865

1. This communication is in response to applicant's Appeal Brief received 12-April-2007.

Claims 25-30 are pending in the application, and prosecution of these claims is reopened.

Claims 1-24 were cancelled by applicant's amendment received 29-April-2005.

The 101 rejections of claims 25-30, mailed on 20-November-2006, are vacated by the examiner via this response, in view of a new specification objection and a double patenting rejection. Also, the examiner respectfully thanks applicant for submission of the Terminal Disclaimer received on 24-April-2006, pertaining to the present application and USP Application 09/875,863.

Specification Objections

2. The disclosure is objected to because the reference to USP Application 09/876,013 [line 7] should be updated to reflect the current "abandoned" status of the application.

Double Patenting Rejections

3.1 The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

In re Application of: Benny et al.

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.3218 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.2 Claims 25-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-25 of U.S. Patent Application No. 09/876,090. This is a provisional rejection because the conflicting claims have not in fact been patented.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention is directed to a method for using an enterprise service delivery technical model to develop a technical framework to provide Systems Management services to a customer (Claim 25 preamble), and the '090 application is directed to a method for creating a technical framework for use in delivering a specific set of information technology services for a customer (Claim 22 preamble).

Furthermore, the claims noted above of the present invention and the application are each directed to concepts for:

In re Application of: Benny et al.

determining a solution scope specific to an information technology environment of a customer;

mapping existing customer information to architectural building blocks of a service delivery technical model; and

creating a list of design objects and designated relationships between the design objects as a function of the solution scope, wherein the design objects deliver the services to the customer in accordance with the solution scope.

For at least these reasons, one of ordinary skill would have found it obvious that the concepts for using an enterprise service delivery technical model to develop a technical framework to provide Systems Management services to a customer of the present invention, and creating a technical framework for use in delivering a specific set of information technology services for a customer as in the '090 application, are not patentably distinct in so far as the specifications of each application support the identical critical features noted above.

Response Guidelines

4. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

4.1 Any response to the Examiner in regard to this non-final action should be

directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
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Serial Number: 09/875,865

Page 5

In re Application of: Benny et al.

or faxed to: (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 6-August-2007

A handwritten signature in black ink, appearing to read "RUSSELL FREJD", is written over a horizontal line.

**RUSSELL FREJD
PRIMARY EXAMINER**